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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN
UNLIMITED JURISDICTION

VIRGINIA CARDENAS, on behalf of herself
and all others similarly situated, and the
general public,

Plaintiff,

v.

WESTCARE CALIFORNIA, INC., a
California corporation; WESTCARE
FOUNDATION, INC., a Nevada corporation;
WESTCARE, INC., a Nevada Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-22-102797

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT FOR

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff VIRGINIA CARDENAS (“Plaintiff”), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants WESTCARE
5 CALIFORNIA, INC., a California corporation; WESTCARE FOUNDATION, INC., a Nevada
6 corporation; WESTCARE, INC., a Nevada Corporation; and DOES 1 through 50, inclusive,
7 (collectively referred to as “Defendants”) for alleged violations of the Labor Code. As set forth
8 below, Plaintiff alleges that Defendants have

- 9 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
10 periods;
11 (2) failed to provide them with rest periods;
12 (3) failed to pay them premium wages for missed meal and/or rest periods;
13 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
14 rate of pay;
15 (5) failed to pay them at least minimum wage for all hours worked;
16 (6) failed to pay them for all vested vacation pay;
17 (7) failed to provide them with accurate written wage statements; and
18 (8) failed to pay them all of their final wages following separation of employment.

19 Based on these alleged violations, Plaintiff now brings this class and representative action to
20 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
21 herself and all others similarly situated, all other aggrieved employees, and the State of California.

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
24 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
25 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

26 3. Venue is proper in KERN COUNTY pursuant to Code of Civil Procedure §§ 393(a),
27 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
28 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,

1 transacts business, and/or has an agent therein.

2 **PARTIES**

3 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
4 residing in the State of California.

5 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant
6 WESTCARE CALIFORNIA, INC. is, and at all relevant times mentioned herein, was a California
7 corporation doing business in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant
9 WESTCARE FOUNDATION, INC. is, and at all relevant times mentioned herein, a Nevada
10 corporation doing business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant
12 WESTCARE, INC. is, and at all relevant times mentioned herein, a Nevada corporation doing
13 business in the State of California.

14 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
15 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
16 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
17 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
18 fictitiously named defendants are responsible in some manner for the occurrences, acts and
19 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
20 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
21 capacities of the DOE defendants when ascertained.

22 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
23 mentioned herein, some or all of the defendants were the representatives, agents, employees,
24 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
25 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
26 and scope of such relationship and with the full knowledge, consent, and ratification by such other
27 defendants.

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CLASS ALLEGATIONS

10. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

11. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Wage Statement Penalties Class: All employees of Defendants and/or any staffing agencies and/or any other third parties in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Vacation Pay Class: All persons employed by Defendants in California who earned paid vacation days, including but not limited to, "Floating Holidays," without receiving compensation for each vested paid vacation day during the **Relevant Time Period**.

Regular Rate Class: All of Defendants' hourly, non-exempt employees who were not paid overtime wages for all overtime hours worked and/or premiums for meal and/or rest break violations as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, shift differentials, shift premiums, and/or non-discretionary bonuses.

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

1 13. **Numerosity**: The class members are so numerous that the individual joinder of each
2 individual class member is impractical. While Plaintiff does not currently know the exact number of
3 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
4 exceeds the minimum required for numerosity under California law.

5 14. **Commonality and Predominance**: Common questions of law and fact exist as to all
6 class members and predominate over any questions that affect only individual class members. These
7 common questions include, but are not limited to:

- 8 i. Whether Defendants maintained a policy or practice of failing to provide employees
9 with their meal periods;
- 10 ii. Whether Defendants maintained a policy or practice of failing to provide employees
11 with their rest periods;
- 12 iii. Whether Defendants failed to pay premium wages to class members when they have
13 not been provided with required meal and/or rest periods;
- 14 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
15 as a result of policies that fail to provide meal periods in accordance with California
16 law;
- 17 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
18 for all time worked;
- 19 vi. Whether Defendants subjected the vacation time and/or floating holidays they offer
20 to class members to forfeiture;
- 21 vii. Whether Defendants failed to provide class members with accurate written wage
22 statements as a result of providing them with written wage statements with
23 inaccurate entries for, among other things, amounts of gross and net wages, and total
24 hours worked;
- 25 viii. Whether Defendants failed to pay class members all wages without discount;
- 26 ix. Whether Defendants applied policies or practices that result in late and/or incomplete
27 final wage payments;
- 28 x. Whether Defendants are liable to class members for waiting time penalties under

Labor Code section 203;

- xi. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

15. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

16. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in that she has no interests that are adverse to or otherwise conflict with the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

17. **Adequacy of Class Counsel**: Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

18. **Superiority**: A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to prosecute their common claims simultaneously and efficiently in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

19. Plaintiff worked for Defendants as an hourly, non-exempt employee from approximately November 19, 2020 through March 1, 2022.

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1 **Missed Meal Periods**

2 20. Plaintiff and the putative class were not provided with meal periods of at least thirty
3 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
4 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
5 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an
6 employee would be able to take their breaks if they wanted to finish their work on time; and (4)
7 Defendant's policy of having employees clock out for meals but continue working.

8 21. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
9 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
10 worked due to complying with Defendants' policy to work through meal breaks.

11 **Missed Rest Periods**

12 22. Plaintiff and the putative class were not provided with rest periods of at least ten
13 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
14 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing
15 each work shift with not enough workers; and (3) imposing so much work on each employee such
16 that it made it unlikely that an employee would be able to take their breaks if they wanted to finish
17 their work on time.

18 23. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
19 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
20 due to complying with Defendants' productivity requirements that required Plaintiff and the
21 putative class to work through their rest periods in order to complete their assignments on time.

22 **Off-the-Clock Work**

23 24. Plaintiff and the putative class were not paid all wages earned as Defendants
24 directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-
25 clock work.

26 25. Plaintiff and the putative class regularly performed work after their scheduled work
27 hours and were not paid for this time. Plaintiff and the putative class were instructed to perform
28 duties such as delivering items to patients' rooms after they had already clocked out and were not

paid for the time spent performing these additional duties.

26. Plaintiff and the putative class regularly worked during their lunch hour when they were clocked out at the direction of their supervisors. Defendants required Plaintiff and the putative class members to clock out for one hour meal breaks, but to continue working.

27. As a result of performing off-the-clock work that was directed, permitted, or otherwise encouraged by Defendants, Plaintiff and the putative class should have been paid for this time. Instead, Defendants only paid Plaintiff and the putative class based on the time they were clocked in for their shifts and did not pay Plaintiff and the putative class for any of the time spent working off-the-clock.

28. Defendants knew or should have known that Plaintiff and the putative class were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the putative class for these hours.

29. Defendants were aware of this practice and directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-clock work.

30. As a result of Defendants' policies and practices, Plaintiff and the putative class were not paid for all hours worked.

Vacation Pay

31. Plaintiff and the putative class accrued vacation wages during their employment with Defendants.

32. Vacation wages are considered a form of wages under Labor Code § 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

33. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

34. Because Defendants required Plaintiff and the putative class to work off-the-clock, the employees were not accruing vacation time at the rate they would have had the Defendants been

1 properly calculating the employees' hours.

2 35. Plaintiff and the putative class are entitled to vacation accrued during their
3 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all
4 accrued vacation pay.

5 **Regular Rate of Pay**

6 36. The regular rate of pay under California law includes all remuneration for
7 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
8 not limited, to, commissions and non-discretionary bonuses.

9 37. During the applicable limitations period, Defendants violated the rights of Plaintiff
10 and the putative class under the above-referenced Labor Code sections by failing to pay them
11 overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198
12 as a result of not correctly calculating their regular rate of pay to include all applicable
13 remuneration, including, but not limited to, non-discretionary bonuses and/or shift-differential pay.

14 **Wage Statements**

15 38. Plaintiff and the putative class were not provided with accurate wage statements as
16 mandated by law pursuant to Labor Code § 226.

17 39. Defendants failed to comply with Labor Code 0167 226(a)(1) as "gross wages
18 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
19 clock" work were not included.

20 40. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
21 worked by the employee" were not accurately reflected in that all hours worked, including overtime
22 and "off-the-clock" work were not included.

23 41. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
24 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
25 clock" work were not included.

26 42. Defendants failed to comply with Labor Code section 226(a)(8) as "the name and
27 address of the legal entity that is the employer" were not accurately reflected in that "WestCare
28 California, Inc." was not properly punctuated.

43. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including “off-the-clock” work were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

44. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

45. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

46. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

47. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

48. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

49. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

50. Section 11 of the applicable Wage Order states:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the

1 meal period may be waived by mutual consent of the employer and employee.
2 Unless the employee is relieved of all duty during a 30 minute meal period, the
3 meal period shall be considered an 'on duty' meal period and counted as time
4 worked. An 'on duty' meal period shall be permitted only when the nature of
5 the work prevents an employee from being relieved of all duty and when by
6 written agreement between the parties an on-the-job paid meal period is agreed
7 to. The written agreement shall state that the employee may, in writing, revoke
8 the agreement at any time."

9 51. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
10 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
11 members were not subject to valid on-duty meal period agreements with Defendants.

12 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
14 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
15 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

16 53. Plaintiff alleges that, at all relevant times during the applicable limitations period,
17 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
18 **Class** members when they worked five (5) hours without clocking out for any meal period.

19 54. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
20 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
21 regular rates of pay when required meal periods were not provided.

22 55. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
23 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
24 costs of suit.

25 56. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
26 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal**
27 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 204, 223, 226.7 and 1198)
(Plaintiff and Rest Period Sub-Class)

57. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

58. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

59. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

60. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

61. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

62. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

63. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the applicable Wage Order.

64. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

65. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and

1 costs of suit.

2 66. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period**
4 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

7 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

8 **(Plaintiff and Hourly Employee Class)**

9 67. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 68. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have
11 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
12 applicable Wage Order.

13 69. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
14 which an employee is subject to the control of the employer, and includes all the time the employee
15 is suffered or permitted to work, whether or not required to do so."

16 70. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
17 employees at least the minimum wage set forth therein for all hours worked, which consists of all
18 hours that an employer has actual or constructive knowledge that employees are working.

19 71. Labor Code § 1194 invalidates any agreement between an employer and an
20 employee to work for less than the minimum or overtime wage required under the applicable Wage
21 Order.

22 72. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
23 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
24 underlying unpaid minimum wages and interest thereon.

25 73. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
26 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
27 period.

28 74. Labor Code § 1197.1 provides that it is unlawful for any employer or any other

1 person acting either individually or as an officer, agent, or employee of another person to pay an
2 employee, or cause an employee to be paid, less than the applicable minimum wage.

3 75. Labor Code § 1198 makes it unlawful for employers to employ employees under
4 conditions that violate the applicable Wage Order.

5 76. Labor Code § 204 requires employers to pay non-exempt employees their earned
6 wages for the normal work period at least twice during each calendar month on days the employer
7 designates in advance and to pay non-exempt employees their earned wages for labor performed in
8 excess of the normal work period by no later than the next regular payday.

9 77. Labor Code § 223 makes it unlawful for employers to pay their employees lower
10 wages than required by contract or statute while purporting to pay them legal wages.

11 78. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
12 non-exempt employees overtime wages of no less than one and one-half times the employees'
13 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
14 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
15 seventh consecutive day of one workweek.

16 79. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
17 pay non-exempt employees overtime wages of no less than two times the employees' respective
18 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
19 worked in excess of eight hours on a seventh consecutive workday during the workweek.

20 80. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
21 centrally devised policies and practices to her and **Hourly Employee Class** members with respect
22 to working conditions and compensation arrangements.

23 81. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
24 **Employee Class** members for all time worked, including but not limited to, off-the-clock work and
25 overtime hours at statutory and/or agreed rates.

26 82. At all relevant times during the applicable limitations period, Defendants maintained
27 a policy or practice of requiring Plaintiff and the putative class to clock out for one hour meal
28 periods, but continue working, therefore automatically deducting one hour from Plaintiff's

1 timesheet on every workday for a meal period, regardless of whether or not Plaintiff was provided
2 with a meal period.

3 83. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants maintained a policy or practice of automatically deducting one hour
5 from **Hourly Employee Class** members' timecard on every workday for a meal period, regardless
6 of whether or not **Hourly Employee Class** members were provided with a meal period.

7 84. As a result of Defendants' policy or practice of automatically deducting one hour
8 from employees' timecards for every workday for a meal period, Plaintiff and **Hourly Employee**
9 **Class** members were required to perform off-the-clock work that Defendants either knew or should
10 have known they were working.

11 85. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
12 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
13 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiff for all
14 overtime hours worked.

15 86. Plaintiff is informed and believes that, at all relevant times during the applicable
16 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
17 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours
18 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

19 87. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
20 **Employee Class** members all earned wages every pay period at the correct rates, including
21 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
22 **Hourly Employee Class** members to perform off-the-clock work.

23 88. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
24 members have suffered damages in an amount subject to proof, to the extent they were not paid the
25 full amount of wages earned during each pay period during the applicable limitations period,
26 including overtime wages.

27 89. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
28 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and

1 overtime wages, interest thereon, and costs of suit.

2 90. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
4 **Employee Class** members, seeks to recover reasonable attorneys' fees.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY VACATION WAGES**

7 **(Lab. Code § 227.3)**

8 **(Plaintiff and Vacation Pay Class)**

9 91. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 92. California Labor Code section 227.3 provides:

11 Unless otherwise provided by a collective-bargaining agreement, whenever a contract
12 of employment or employer policy provides for paid vacations, and an employee is
13 terminated without having taken off his vested vacation time, all vested vacation shall
14 be paid to him as wages at his final rate in accordance with such contract of
15 employment or employer policy respecting eligibility or time served; provided,
however, that an employment contract or employer policy shall not provide for
forfeiture of vested vacation time upon termination. The Labor Commissioner or a
designated representative, in the resolution of any dispute with regard to vested
vacation time, shall apply the principles of equity and fairness.

16 93. At all relevant times during the applicable limitations period, Plaintiff and members
17 of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

18 94. As a result of Defendants' reimbursement policies and practices, Plaintiff is
19 informed and believes and thereon alleges that Defendants failed to reimburse her and **Vacation**
20 **Pay Class** members for all accrued vacation wages.

21 95. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are
22 entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of
23 the filing of the original Complaint until the date of entry of judgment.

24 96. Plaintiff, on behalf of herself and the members of the **Vacation Pay Class**, seeks
25 interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California
26 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil
27 Procedure section 1021.5.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 97. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 98. Labor Code § 226(a) states:

7 An employer, semimonthly or at the time of each payment of wages, shall furnish to
8 his or her employee, either as a detachable part of the check, draft, or voucher paying
9 the employee's wages, or separately if wages are paid by personal check or cash, an
10 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
11 worked by the employee, except as provided in subdivision (j), (3) the number of
12 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
13 rate basis, (4) all deductions, provided that all deductions made on written orders of
14 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of his or her social security number or an
17 employee identification number other than a social security number, (8) the name and
18 address of the legal entity that is the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
20 legal entity that secured the services of the employer, and (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked
22 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
23 temporary services employer as defined in Section 201.3, the rate of pay and the total
24 hours worked for each temporary services assignment. The deductions made from
25 payment of wages shall be recorded in ink or other indelible form, properly dated,
26 showing the month, day, and year, and a copy of the statement and the record of the
27 deductions shall be kept on file by the employer for at least three years at the place of
28 employment or at a central location within the State of California. For purposes of
this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.

99. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
the "detachable part of the check" provision and the "accurate itemized statement in writing"
provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
employee retains the right to elect to receive a written paper stub or record and that those who are
provided with electronic wage statements retain the ability to easily access the information and
convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
Letter July 6, 2006.)

100. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**

1 members with written wage statements as described above.

2 101. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
3 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
4 that Defendants had the ability to provide them with accurate wage statements but had intentionally
5 provided them with written wage statements that Defendants knew do not comply with Labor Code
6 § 226(a).

7 102. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
8 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
9 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
10 and wages earned. In addition, inaccurate information on their wage statements have prevented
11 immediate challenges to Defendants' unlawful pay practices, has required discovery and
12 mathematical computations to determine the amount of wages owed, has caused difficulty and
13 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
14 inaccurate information about wages and deductions to federal and state government agencies.

15 103. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement**
16 **Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the
17 initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred
18 dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a)
19 occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

20 104. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
21 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
22 **Class** members, seek awards of reasonable attorneys' fees and costs.

23 SIXTH CAUSE OF ACTION

24 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

25 **(Lab. Code §§ 201–203)**

26 **(Plaintiff and Waiting Time Penalties Sub-Class)**

27 105. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 106. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members

1 have been entitled, upon the end of their employment with Defendants, to timely payment of all
2 wages earned and unpaid before termination or resignation.

3 107. At all relevant times, pursuant to Labor Code § 201, employees who have been
4 discharged have been entitled to payment of all final wages immediately upon termination.

5 108. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
6 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
7 all final wages at the time of resignation.

8 109. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
9 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
10 all final wages within seventy-two (72) hours' of giving notice of resignation.

11 110. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
12 final wages in accordance with the Labor Code by failing to pay her all of her due wages.

13 111. Plaintiff is informed and believes that, at all relevant times during the applicable
14 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
15 members all of their final wages in accordance with the Labor Code.

16 112. Plaintiff is informed and believes that, at all relevant times during the applicable
17 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
18 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
19 §§ 201 or 202 by failing to timely pay them all final wages due.

20 113. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
21 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been
22 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
23 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
24 requirements.

25 114. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
26 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
27 their final wages had first become due until paid, up to a maximum of thirty days, and interest
28 thereon.

1 115. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
2 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
3 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

7 **(Plaintiff and UCL Class)**

8 116. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

9 117. Business and Professions Code § 17200 defines "unfair competition" to include any
10 unlawful business practice.

11 118. Business and Professions Code §§ 17203–17204 allow a person who has lost money
12 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
13 Procedure § 382 to recover money or property that may have been acquired from similarly situated
14 persons by means of unfair competition.

15 119. California law requires employers to pay hourly, non-exempt employees for all hours
16 they are permitted or suffered to work, including hours that the employer knows or reasonably
17 should know that employees have worked.

18 120. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
19 incorporates the FIRST, SECOND, THIRD, and FOURTH, FIFTH, and SIXTH, causes of action
20 herein.

21 121. Plaintiff lost money and/or property as a result of the aforementioned unfair
22 competition.

23 122. Defendants have or may have acquired money by means of unfair competition.

24 123. Plaintiff is informed and believes and thereupon alleges that, by committing the
25 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 201, 202,
26 203, 204, 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 1199. Defendants
27 thus committed misdemeanors by violating the Labor Code as alleged herein.

28 124. Defendants have committed criminal conduct through their policies and practices of,

1 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
2 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
3 work period of five or more hours; to provide non-exempt employees with uninterrupted, duty-free
4 rest breaks of at least 10 minutes for each work period of four or more hours; and to pay non-
5 exempt employees for all hours worked.

6 125. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
7 employees and entitled to the full protections of both the Labor Code and the applicable Wage
8 Order.

9 126. Defendants' unlawful conduct as alleged in this Complaint amounts to and
10 constitutes unfair competition within the meaning of Business and Professions Code section 17200
11 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
12 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
13 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
14 behalf of similarly situated persons in a class-action proceeding.

15 127. As a result of Defendants' violations of the Labor Code during the applicable
16 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
17 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
18 conduct.

19 128. Plaintiff is informed and believes that other similarly situated persons have been
20 subject to the same unlawful policies or practices of Defendants.

21 129. Due to the unfair and unlawful business practices in violation of the Labor Code,
22 Defendants have gained a competitive advantage over other comparable companies doing business
23 in the State of California that comply with their legal obligations.

24 130. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
25 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
26 that violates, or is considered unlawful under, any other state or federal law.

27 131. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
28 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining

1 Defendants, and each of them, and their agents and employees, from further violations of the Labor
2 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
3 order permanently enjoining Defendants, and each of them, and their respective agents and
4 employees, from further violations of the Labor Code and applicable Industrial Welfare
5 Commission Wage Orders.

6 132. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself
7 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
8 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
9 business practices.

10 133. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
11 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
12 attorneys' fees in connection with their unfair competition claims.

13 **EIGHTH CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698 *et seq.*)**

16 134. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

17 135. During the applicable limitations period, Defendants have violated Labor Code §§
18 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, and
19 applicable Wage Orders.

20 136. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
21 herself and other current and former employees, to bring a representative civil action to recover
22 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
23 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

24 137. Plaintiff, a former employee against whom Defendants committed one or more of the
25 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
26 within the meaning of Labor Code § 2699(c).

27 138. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
28 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency

1 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
2 intent to investigate.

3 139. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
4 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226, 226.7, 227.3,
5 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 1199.

- 6 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 227.3, 1194, and 1198,
7 one hundred dollars (\$100) for each employee per pay period for each initial
8 violation and two hundred dollars (\$200) for each employee per pay period
9 for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 10 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
11 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 12 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
13 employee for each initial violation that was neither willful nor intentional,
14 two hundred dollars (\$200) for each employee, plus 25% of the amount
15 unlawfully withheld from each employee, for each initial violation that was
16 either willful or intentional, and two hundred dollars (\$200) for each
17 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
18 from each employee, for each subsequent violation, regardless of whether the
19 subsequent violation was either willful or intentional (penalties set by Labor
20 Code § 210);
- 21 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
22 employee for each initial violation that was neither willful nor intentional,
23 two hundred dollars (\$200) for each employee, plus twenty-five percent
24 (25%) of the amount unlawfully withheld from each employee, for each
25 initial violation that was either willful or intentional, and two hundred dollars
26 (\$200) for each employee, plus twenty-five percent (25%) of the amount
27 unlawfully withheld from each employee, for each subsequent violation,
28 regardless of whether the subsequent violation was either willful or

intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;

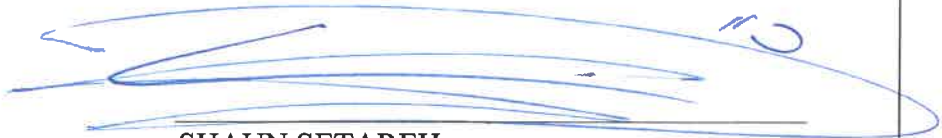
- 1 (6) Liquidated damages;
2 (7) Restitution;
3 (8) Declaratory relief;
4 (9) Pre-judgment interest;
5 (10) Statutory penalties;
6 (11) Civil penalties;
7 (12) Costs of suit;
8 (13) Reasonable attorneys' fees; and
9 (14) Such other relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
12 demands a jury trial on all issues so triable.

13
14 Dated: January 4, 2023

SETAREH LAW GROUP

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16 
17 SHAUN SETAREH
18 DAVID KELEDJIAN
19 DAVID ARAKELYAN
Attorneys for Plaintiff
VIRGINIA CARDENAS
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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Blvd, Suite 430, Beverly Hills, CA 90212.

FIRST AMENDED COMPLAINT

on all interested parties in this action:

[X] **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the persons at the electronic service addresses listed above.

Executed on January 5, 2023, at Beverly Hills, California.

[Signature]

PROOF OF SERVICE